

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICROSOFT CORPORATION, a
Washington corporation,

Plaintiff,

v.

COMPUTERS MADE EASY, INC., aka CME
SERVICES, a Washington corporation,

Defendant.

No.

COMPLAINT FOR DAMAGES
AND EQUITABLE RELIEF

Plaintiff Microsoft Corporation (“Microsoft”) files this Complaint against Defendant
Computers Made Easy, Inc., aka CME Services (“Defendant”), alleging as follows:

I. INTRODUCTION

1. This is an action for copyright and trademark infringement of certain copyrights
and trademarks associated with Microsoft software. This action arises from the unauthorized
copying of Microsoft’s copyrighted software and the trademarks displayed in such software.

2. Defendant has installed, activated, and attempted to activate unlicensed Microsoft
software on hundreds of computer systems using product activation keys that were stolen from
Microsoft’s supply chain, were previously used to activate other copies of software (namely,
abused product activation keys), were authorized for use only in a region outside of the United
States, and/or were restricted for use by academic customers only.

of, or otherwise may be found, in this judicial district and a substantial part of the events giving rise to the claims occurred in this district.

10. Pursuant to Local Civil Rule 3(d), intra-district assignment to the Tacoma Division is proper because Defendant has its principal place of business in Clark County.

IV. FACTS COMMON TO ALL CLAIMS

A. The Global Problem of Software Piracy

11. Software developers lose billions of dollars in annual revenue from software piracy, namely, the unauthorized and unlawful copying, downloading, and distributing of copyrighted and trademarked software and related components. In 2015, the commercial value of pirated software in the United States was in excess of \$10 billion.

12. One prominent form of software piracy is known as “hard-disk loading,” the unauthorized commercial copying and installation of infringing software on devices which are often sold in competition with, and often for lower prices than, devices pre-installed with legally licensed copies of software.

13. Software developers, like Microsoft, are not the only victims of software piracy. Consumers are also victims, as they are often deceived by distributors of pirated software who go to great lengths to make the software appear genuine. These customers may unwittingly expose themselves to security risks associated with the use of pirated software. *See* Federal Bureau of Investigation, *Consumer Alert: Pirated Software May Contain Malware*, Aug. 1, 2013, at <http://www.fbi.gov/news/stories/2013/august/pirated-software-may-contain-malware/> (noting the relatively greater risk that pirated software is infected with malicious software, or “malware,” which can be used to record keystrokes and thus capture sensitive information such as user names, passwords, and Social Security numbers).

B. Microsoft’s Software and Intellectual Property

14. Microsoft develops, advertises, markets, distributes, and licenses a number of computer software programs. Microsoft’s software programs are recorded on distributable

1 media, such as DVDs, or are made available for download through various authorized
2 distribution channels.

3 15. **Windows 10:** Microsoft has developed, advertises, markets, distributes, and
4 licenses a computer operating system called Microsoft Windows 10 (“Windows 10”). Windows
5 10 is available in a number of different versions, each of which includes certain combinations of
6 products, programs, and features. Versions of Windows 10 include Windows 10 and Windows
7 10 Professional. Microsoft holds a valid copyright in Windows 10 Professional, the most
8 expansive version of Windows 10. As a result, Microsoft’s copyright in Windows 10
9 Professional encompasses all other versions of Windows 10. Microsoft’s copyright in Windows
10 10 Professional was duly and properly registered with the United States Copyright Office. A
11 true and correct copy of the Registration Certificate for Microsoft Windows 10 Professional,
12 bearing the number TX 8-058-526, is attached as Exhibit 1.

13 16. **Windows 8.1:** Microsoft has developed, advertises, markets, distributes, and
14 licenses a computer operating system called Microsoft Windows 8.1 (“Windows 8.1”).
15 Windows 8.1 is available in a number of different versions, each of which includes certain
16 combinations of products, programs, and features. Versions of Windows 8.1 include Windows
17 8 and Windows 8.1 Professional. Microsoft holds a valid copyright in Windows 8.1
18 Professional, the most expansive version of Windows 8.1. As a result, Microsoft’s copyright in
19 Windows 8.1 Professional encompasses all other versions of Windows 8.1. Microsoft’s
20 copyright in Windows 8.1 Professional was duly and properly registered with the United States
21 Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
22 Windows 8 Professional, bearing the number TX 7-740-672, is attached as Exhibit 2.

23 17. **Windows 8:** Microsoft has developed, advertises, markets, distributes, and
24 licenses a computer operating system called Microsoft Windows 8 (“Windows 8”). Windows 8
25 is available in a number of different versions, each of which includes certain combinations of
26 products, programs, and features. Versions of Windows 8 include Windows 8 and Windows 8
27 Professional. Microsoft holds a valid copyright in Windows 8 Professional, the most expansive

1 version of Windows 8. As a result, Microsoft's copyright in Windows 8 Professional
2 encompasses all other versions of Windows 8. Microsoft's copyright in Windows 8 Professional
3 was duly and properly registered with the United States Copyright Office. A true and correct
4 copy of the Registration Certificate for Microsoft Windows 8 Professional, bearing the number
5 TX 7-601-008, is attached as Exhibit 3.

6 18. **Windows 7:** Microsoft has developed, advertises, markets, distributes, and
7 licenses a computer operating system called Microsoft Windows 7 ("Windows 7"). Windows 7
8 is available in a number of different versions including Windows 7 Ultimate, Windows 7
9 Professional, Windows 7 Home Premium, and Windows 7 Enterprise. Microsoft holds a valid
10 copyright in Windows 7 Ultimate, the most expansive version of Windows 7. As a result,
11 Microsoft's copyright in Windows 7 Ultimate encompasses all other versions of Windows 7.
12 Microsoft's copyright in Windows 7 Ultimate was duly and properly registered with the United
13 States Copyright Office. A true and correct copy of the Registration Certificate for Microsoft
14 Windows 7 Ultimate, bearing the number TX 7-009-361, is attached as Exhibit 4.

15 19. **Microsoft Office 365:** Microsoft has developed, advertises, markets, distributes,
16 and licenses a suite of productivity software for business, home, and educational use called
17 Microsoft Office 365 ("Office 365"). Office 365 is available in a number of different versions,
18 each of which includes certain combinations of products, programs, and features. Versions of
19 Office 365 include, but are not limited to, Office 365 Business, Office 365 Business Essentials,
20 Office 365 Business Premium, Office 365 ProPlus, Office 365 Enterprise E1, Office 365
21 Enterprise E3, Office 365 Enterprise E5, Office Professional 2016, Office Professional Home
22 and Business 2016, Office Home and Business 2016, Office Home and Student 2016, and Office
23 Professional Plus 2016. Microsoft holds a valid copyright in Office 365 ProPlus 2016, the most
24 expansive version of Office 365, and this copyright encompasses all versions of Office 365,
25 including Office Professional 2016. Microsoft's copyright in Office 365 ProPlus 2016 was duly
26 and properly registered with the United States Copyright Office, bearing the number TX 8-097-
27 602, and is attached hereto as Exhibit 5.

20. **Office 2013:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Office 2013 (“Office 2013”). Office 2013 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2013 include Office 2013 Professional, Office 2013 Home and Business, and Office 2013 Home and Student. Microsoft holds a valid copyright in Office 2013 Professional Plus, the most expansive version of Office 2013. As a result, Microsoft’s copyright in Office 2013 Professional encompasses all other versions of Office 2013. Microsoft’s copyright in Office 2010 Professional was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Office 2013 Professional, bearing the number TX 7-649-882, is attached as Exhibit 6.

21. **Office 2010:** Microsoft has developed, advertises, markets, distributes, and licenses a computer operating system called Microsoft Office 2010 (“Office 2010”). Office 2010 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Office 2010 include Office 2010 Professional, Office 2010 Professional Plus, Office 2010 Home and Business, and Office 2010 Home and Student. Microsoft holds a valid copyright in Office 2010 Professional Plus, the most expansive version of Office 2010. As a result, Microsoft’s copyright in Office 2010 Professional Plus encompasses all other versions of Office 2010. Microsoft’s copyright in Office 2010 Professional Plus was duly and properly registered with the United States Copyright Office. A true and correct copy of the Registration Certificate for Office 2010 Professional Plus, bearing the number TX 7-151-840, is attached as Exhibit 7.

22. **Windows Server 2012:** Microsoft has developed, advertises, markets, distributes, and licenses a line of server operating system called Windows Server 2012. Windows Server 2012 is available in a number of different versions, each of which includes certain combinations of products, programs, and features. Versions of Windows Server 2012 include Windows Server Standard 2012 R2, Windows Server Standard 2012, Windows Web

1 Server 2012 R2, and Windows Web Server 2012. Microsoft holds a valid copyright in
 2 Windows Server, which encompasses all versions of Windows Server. Microsoft's copyright in
 3 Windows Server was duly and properly registered with the United States Copyright Office. A
 4 true and correct copy of the Registration Certificate for Windows Server, bearing the number
 5 TX 7-622-123, is attached as Exhibit 8.

6 23. **Windows Server 2008:** Microsoft has developed, advertises, markets,
 7 distributes, and licenses a line of server operating systems for business use called Windows
 8 Server 2008. Windows Server 2008 is available in a number of different versions, each of
 9 which includes certain combinations of products, programs, and features. Versions of Windows
 10 Server 2008 include Windows Server Standard 2008 R2, Windows Server Standard 2008,
 11 Windows Web Server 2008 R2, and Windows Web Server 2008. Microsoft holds a valid
 12 copyright in Windows Server, which encompasses all versions of Windows Server. Microsoft's
 13 copyright in Windows Server was duly and properly registered with the United States Copyright
 14 Office. A true and correct copy of the Registration Certificate for Windows Server, bearing the
 15 number TX 6-880-740, is attached as Exhibit 9.

16 24. Microsoft has also duly and properly registered a number of trademarks and
 17 service marks in the United States Patent and Trademark Office on the Principal Register,
 18 including without limitation:

- 19 (a) "MICROSOFT," Trademark and Service Mark Registration No. 1,200,236 for
 20 computer programs and computer programming services;
- 21 (b) "WINDOWS," Trademark Registration No. 1,872,264 for computer programs
 22 and manuals sold as a unit;
- 23 (c) "FLAG DESIGN TWO (B/W)," Trademark Registration No. 2,738,877 for
 24 computer software;
- 25 (d) "FLAG DESIGN TWO (COLOR)," Trademark Registration No. 2,744,843 for
 26 computer software;

1 (e) "MICROSOFT OFFICE," Trademark Registration No. 3,625,391 for computer
2 productivity software;

3 (f) "OFFICE 2010 DESIGN," Trademark Registration No. 4,029,299 for computer
4 productivity software;

5 (g) "OFFICE 2012 DESIGN," Trademark Registration No. 4,459,826 for computer
6 productivity software;

7 (h) "ACCESS," Trademark Registration No. 3,238,869 for computer database
8 management software;

9 (i) "ACCESS LAUNCH ICON (2010)," Trademark Registration No. 3,905,556 for
10 computer database management software;

11 (j) "ACCESS LAUNCH ICON (2012)," Trademark Registration No. 4,365,955 for
12 computer database management software;

13 (k) "CAMERA TILE," Trademark Registration No. 4,415,986 for computer software
14 for accessing and managing camera functions;

15 (l) "CHARM BAR," Trademark Registration No. 4,489,348 for computer software
16 operating system;

17 (m) "EXCEL," Trademark Registration No. 2,942,050 for computer spreadsheet
18 software;

19 (n) "EXCEL LAUNCH ICON 2010," Trademark Registration No. 3,905,558 for
20 computer spreadsheet software;

21 (o) "EXCEL LAUNCH ICON 2012," Trademark Registration No. 4,355,451 for
22 computer spreadsheet software;

23 (p) "GAMES TILE," Trademark Registration No. 4,444,995 for computer software
24 enabling access to online games;

25 (q) "MAPS TILE," Trademark Registration No. 4,415,985 for computer software for
26 mapping and directions;

1 (r) "MESSAGING TILE," Trademark Registration No. 4,426,631 for computer
2 software for text and multimedia messaging;

3 (s) "MUSIC TILE," Trademark Registration No. 4,426,630 for computer software
4 for downloading and listening to music and other audio content;

5 (t) "ONENOTE," Trademark Registration No. 2,844,710 for computer software for
6 use in note taking;

7 (u) "ONENOTE LAUNCH ICON 2010," Trademark Registration No 3,905,559 for
8 computer software for use in note taking;

9 (v) "ONENOTE LAUNCH ICON 2012," Trademark Registration No 4,351,584 for
10 computer software for use in note taking;

11 (w) "OUTLOOK," Trademark Registration No. 2,188,125 for computer programs for
12 providing enhanced electronic mail and scheduling capabilities;

13 (x) "OUTLOOK LAUNCH ICON 2010," Trademark Registration No. 3,905,560, for
14 computer programs for providing enhanced electronic mail and scheduling capabilities;

15 (y) "OUTLOOK LAUNCH ICON 2012," Trademark Registration No. 4,355,446 for
16 computer programs for providing enhanced electronic mail and scheduling capabilities;

17 (z) "POWERPOINT," Trademark Registration No. 1,475,795 for computer software
18 programs for creating presentations, graphics and videos;

19 (aa) "POWERPOINT LAUNCH ICON 2010," Trademark Registration No. 3,905,561
20 for computer software programs for creating presentations, graphics and videos;

21 (bb) "POWERPOINT LAUNCH ICON 2012," Trademark Registration No. 4,385,388
22 for computer software programs for creating presentations, graphics and videos;

23 (cc) "PUBLISHER LAUNCH ICON," Trademark Registration No. 3,909,142 for
24 desktop publishing software;

25 (dd) "PUBLISHER LAUNCH ICON 2012," Trademark Registration No. 4,355,448
26 for desktop publishing software;
27

(ee) “SPORTS TILE,” Trademark Registration No. 4,426,632 for computer software for viewing information and content about sports;

(ff) “VIDEO TILE,” Trademark Registration No. 4,412,218 for computer software for downloading and viewing video content;

(gg) “WINDOWS 8 PACKAGING,” Trademark Registration No. 4,476,005 for computer operating system software;

(hh) “WINDOWS SERVER,” Trademark Registration No. 3,056,149, for operating system, computer and utility programs;

(ii) “WINDOWS STORE TILE,” Trademark Registration No. 4,552,497 for operating system software;

(jj) “WORD LAUNCH ICON 2010,” Trademark Registration No. 3,909,143 for word processing software; and

(kk) “WORD LAUNCH ICON 2012,” Trademark Registration No. 4,355,444 for word processing software.

True and correct copies of the Trademark Registrations for (a) through (kk) above are attached as Exhibits 10 through 46, respectively.

C. Microsoft’s Distribution Channels for Software

25. Microsoft distributes its software through a number of distribution channels, including the Original Equipment Manufacturer (OEM), volume licensing, subscriptions, and refurbisher channels.

26. The Original Equipment Manufacturer (“OEM”) distribution channel is one through which Microsoft software is distributed to computer and device manufacturers called OEMs. OEMs customarily pre-install software on the devices they build including, most commonly, the Microsoft Windows operating system.

27. The OEM distribution channel involves sub-channels that supply Microsoft software to different categories of OEMs. Two of these sub-channels are the Commercial OEM channel and the Direct OEM channel.

1 28. Through the Commercial OEM (“COEM”) channel, Microsoft authorized
2 distributors supply what is called “system builder” software to small and medium-sized OEMs
3 for pre-installation on devices.

4 29. Through the Direct OEM (“DOEM”) channel, Microsoft directly provides
5 software to large computer manufacturers, such as Dell and Lenovo, for pre-installation on
6 devices. The DOEMs acquire some components associated with the Microsoft software from
7 Microsoft Authorized Replicators (“ARs”).

8 30. In addition to the OEM channel, Microsoft offers a number of subscription
9 programs through which it provides software to qualified subscribers. One example of a
10 subscription program is the Microsoft Developer Network (“MSDN”), which is for individuals
11 and entities that develop third-party software compatible with Microsoft software. MSDN
12 subscribers are able to download certain Microsoft software directly from Microsoft.

13 31. Microsoft also offers Volume Licensing (“VL”) programs for its business
14 customers. Through the VL program, customers purchase licenses for their software and can
15 add, remove, and upgrade their software as their business needs evolve.

16 **D. Product Activation**

17 32. Like many other software developers, Microsoft has implemented a wide-range
18 of initiatives to protect its customers and combat theft and infringement of its intellectual
19 property. One important tool in Microsoft’s anti-piracy protection arsenal is its product
20 activation system, which involves the activation of software through product activation keys.

21 33. A Microsoft product key is a 25-character alphanumeric string generated by
22 Microsoft and provided to customers and OEMs. Generally, when customers or OEMs install
23 Microsoft software on a device, they must enter a product key. Then, as part of the activation
24 process, customers and, in some cases, OEMs voluntarily contact Microsoft’s activation servers
25 over the Internet and transmit their product activation keys and other technical information
26 about their device to the activation servers. The majority of the activations involved in this
27 matter contacted servers that are physically located in Washington.

1 34. The activation process is analogous to the activation of credit cards or mobile
2 phones with a code provided by the financial institution or the mobile carrier. Because
3 Microsoft's copyrighted software is capable of being installed on an unlimited number of
4 computers, Microsoft relies on the product activation process to detect piracy and protect
5 consumers from the risks of non-genuine software.

6 35. Product activation is a technology tool used by Microsoft to protect its
7 intellectual property from piracy and other forms of abuse. Product activation keys are not a
8 software license, nor do they constitute authorization from Microsoft to access or use software,
9 unless the software is legally licensed. Microsoft does not sell product activation keys without
10 an accompanying software license.

11 36. In the OEM channel, each copy of genuine Microsoft Windows 10, Windows 8.1,
12 Windows 8, Windows 7, Office 2016, Office 2013, Office 2010, Windows Server 2012 and
13 Windows Server 2008 software is distributed with a product key unique to that copy of the
14 software—thus, for example, if a customer purchases ten copies of Windows 7, the customer is
15 supplied with ten unique product activation keys. For Microsoft's subscription and VL
16 programs, customers are normally supplied a single product key for each version of Microsoft
17 software they license. For example, subscription and volume licensing customers receive one
18 reusable product key for all Office 2010 Professional licenses authorized under their agreements
19 to install and activate all copies.

20 37. Product activation works differently in the COEM and DOEM channels. COEMs
21 use individual product activation keys to install and, in some cases, activate the software on the
22 devices. DOEMs, on the other hand, either use a master key or a separate file generated from
23 Microsoft to install Windows software on each device.

24 **E. Microsoft's Use of Cyberforensics to Combat Piracy**

25 38. In order to combat the global threat of software piracy of its software, Microsoft
26 relies on investigative methods that leverage state-of-the-art technology to detect software
27 piracy. Microsoft refers to these methods as "cyberforensics."

1 39. As part of its cyberforensic methods, Microsoft analyzes activation data
2 voluntarily provided by users when they activate Microsoft software, including the IP address
3 from which a given product is activated. An IP address is a numerical identifier used to
4 uniquely identify an internet-capable device when the device is connected to the Internet. An IP
5 address is ordinarily assigned to an internet user (whether an individual or an entity) by the
6 user's Internet Service Provider ("ISP").

7 40. Entities charged with managing and administering internet numbering resources,
8 including IP addresses, publish information about IP address assignment and registration in
9 publicly-searchable databases. Akin to an IP address "phone book," these databases can be used
10 to associate each IP address with the individual or entity assigned to use that address. In some
11 cases, the listed individual or entity is actually using the IP address; in other cases, the listed
12 individual or entity is an ISP who has assigned the IP address to one of its customers. Thus, in
13 some instances, the identity of the individual or entity associated with a particular IP address is
14 publicly available; in other instances, the identity of the individual or entity can only be obtained
15 from the ISP assigned to that IP address.

16 41. Cyberforensics allows Microsoft to analyze billions of activations of Microsoft
17 software and identify activation patterns and characteristics that make it more likely than not
18 that the IP address associated with the activations is an address through which pirated software
19 is being activated.

20 **F. Defendant' Infringing Conduct**

21 42. Microsoft's cyberforensics have identified activations of Microsoft software
22 originating from the IP addresses which, on information and belief, are being used by the
23 Defendant in furtherance of the unlawful conduct alleged herein. A significant volume of these
24 activations have characteristics that, on information and belief, demonstrate that Defendant is
25 using the IP Addresses to activate pirated and unlicensed software.

26 43. On information and belief, Defendant has activated and attempted to active
27 copies of Microsoft Windows 10, Windows 8.1, Windows 8, Windows 7, Office 2016, Office

2013, Office 2010, Windows Server 2012 and Windows Server 2008 with product activation keys that have the following characteristics:

- a. A product activation key known to have been stolen from Microsoft's supply chain;
- b. Product activation keys used more times than authorized by the applicable software licenses;
- c. Product activation keys used by non-qualified individuals or entities, or by individuals or entities other than the subscriber;
- d. Product activation keys used in a manner that is not authorized by the applicable license (such as product activation keys intended for educational users used by commercial entities); or
- e. Product activation keys used to activate software outside of the region for which they were intended.

44. On information and belief, each of these activations and attempted activations constitutes the unauthorized copying of Microsoft software, in violation of Microsoft's software licenses and its intellectual property rights.

45. On information and belief, Defendant has been and continues to be involved in installing counterfeit and infringing copies of Microsoft's software and/or related components.

46. On information and belief, Defendant has committed and continues to commit acts of copyright and trademark infringement against Microsoft. On information and belief, at a minimum, Defendant acted with willful blindness to, or in reckless disregard of, Microsoft's registered copyrights, trademarks, and service mark.

V. CAUSES OF ACTION

First Claim

Copyright Infringement - 17 U.S.C. § 501 *et seq.*

47. Microsoft is the sole owner of Microsoft Windows 10, Windows 8.1, Windows 8, Windows 7, Office 365 (including Office 2016), Office 2013, Office 2010, Windows Server

1 2012 and Windows Server 2008, and of the corresponding copyrights and Certificates of
2 Registration with the registration numbers listed above.

3 48. Defendant has infringed Microsoft's copyrights by reproducing Microsoft
4 software in the United States of America without approval or authorization from Microsoft.

5 49. At a minimum, Defendant acted with willful blindness to, or in reckless disregard
6 of, Microsoft's registered copyrights.

7 50. As a result of Defendant's wrongful conduct, Microsoft is entitled to recover its
8 actual damages and Defendant's profits attributable to the infringement. Alternatively,
9 Microsoft is entitled to statutory damages under 17 U.S.C. § 504(c).

10 51. The award of statutory damages should be enhanced in accordance with 17
11 U.S.C. § 504(c)(2).

12 52. Microsoft is further entitled to injunctive relief and an order impounding all
13 infringing materials. Microsoft has no adequate remedy at law for Defendant's wrongful
14 conduct because, among other things: (a) Microsoft's copyrights are unique and valuable
15 property which have no readily determinable market value; (b) Defendant's infringement harms
16 Microsoft such that Microsoft could not be made whole by any monetary award; and (c)
17 Defendant's wrongful conduct, and the resulting damage to Microsoft, is continuing.

18 **Second Claim**
19 **Trademark Infringement – 15 U.S.C. § 1114**

20 53. Defendant's activities constitute infringement of Microsoft's federally registered
21 trademarks and service mark with the registration numbers listed above.

22 54. Microsoft advertises, markets, distributes, and licenses its software and related
23 components under the trademarks and service mark described above and uses these trademarks
24 and service mark to distinguish Microsoft's products from the software and related items of
25 others in the same or related fields.
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27

1 promising or implying through advertisements and marketing materials that Defendant sells
2 properly licensed Microsoft software.

3 62. Defendant's conduct constitutes unfair and deceptive acts and practices in the
4 conduct of trade or commerce. Defendant's conduct has the capacity to deceive a substantial
5 portion of the public to whom that conduct is directed because, on information and belief,
6 Defendant's customers believe they are purchasing properly licensed Microsoft software.

7 63. Defendant's acts and practices are injurious to the public interest because
8 Defendant, in the course of their business, continuously advertised to and solicited the general
9 public throughout the United States to purchase computers from Defendant by expressly or
10 implicitly promising, among other things, that properly licensed Microsoft software was
11 installed on those computers.

12 64. As a direct and proximate result of Defendant's conduct, Microsoft was injured
13 in its business or property, including without limitation (a) reputational injury and loss of
14 business goodwill, and (b) displaced sales of genuine Microsoft software, as a result of the sale
15 of pirated and unlicensed Microsoft software.

16 **Fourth Claim**
17 **Common Law Unfair Competition**

18 65. Microsoft advertises, markets, distributes, and licenses its software and related
19 components under the trademarks and service mark described above, and uses these trademarks
20 and service mark to distinguish Microsoft's software and related components from the software
21 or products of others in the same field or related fields.

22 66. Because of Microsoft's long, continuous, and exclusive use of these trademarks
23 and service mark, they have come to mean, and are understood by customers, end users, and the
24 public to signify, software or services of Microsoft.

25 67. Microsoft has also designed distinctive and aesthetically pleasing displays, logos,
26 icons, and graphic images (collectively, "Microsoft visual designs") for its software programs
27 and related components.

68. On information and belief, Defendant's wrongful conduct includes passing off infringing materials as genuine Microsoft software or related components approved or authorized by Microsoft.

69. In distributing unlicensed software, Defendant has used Microsoft's name or marks in a way that is likely to deceive, and indeed has deceived, the public.

70. As a direct and proximate result of Defendant's unfair competition, Microsoft was injured in its business or property, including without limitation, (a) reputational injury and loss of business goodwill, and (b) displaced sales of genuine Microsoft as a result of the sale of pirated and unlicensed Microsoft software, in an amount to be proved at trial.

Fifth Claim
Imposition of a Constructive Trust

71. Defendant's conduct constitutes deceptive and wrongful conduct in the nature of passing off the infringing materials as genuine Microsoft software or related components approved or authorized by Microsoft.

72. By virtue of Defendant's wrongful conduct, Defendant has illegally received money and profits that rightfully belong to Microsoft.

73. On information and belief, Defendant holds the illegally received money and profits in the form of bank accounts, real property, or personal property that can be located and traced. All such money and profits, in whatever form, are held by Defendant as a constructive trustee for Microsoft.

Sixth Claim
Accounting

74. Microsoft is entitled, pursuant to 17 U.S.C. § 504 and 15 U.S.C. § 1117, to recover any and all profits of Defendant that are attributable to the acts of infringement.

75. The amount of money due from Defendant to Microsoft is unknown to Microsoft and cannot be ascertained without a detailed accounting by Defendant of the precise number of units of infringing material advertised, marketed, installed, offered or distributed by Defendant.

VI. PRAYER FOR RELIEF

WHEREFORE, Microsoft respectfully prays for the following relief:

A. That the Court enter judgment in Microsoft's favor on all claims;

B. That the Court restrain and enjoin Defendant, its directors, principals, officers, agents, representatives, employees, attorneys, successors and assigns, and all others in active concert or participation with it, from:

(i) copying or making any other infringing use or infringing distribution of Microsoft's software and other intellectual property including but not limited to the software identified by the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(ii) manufacturing, assembling, producing, distributing, offering for distribution, circulating, selling, offering for sale, advertising, importing, promoting, or displaying any Microsoft software or other intellectual property bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of Microsoft's registered trademarks, service mark, or copyrights, including, but not limited to, the Trademark, Service Mark, and Copyright Registration Numbers listed above;

(iii) using any simulation, reproduction, counterfeit, copy, or colorable imitation of Microsoft's registered trademarks, service mark, or copyright including, but not limited to the Trademark, Service Mark, and Copyright Registration Numbers listed above, in connection with the manufacture, assembly, production, distribution, offering for distribution, circulation, sale, offering for sale, import, advertisement, promotion, or display of any software, component, and/or other item not authorized or licensed by Microsoft;

(iv) engaging in any other activity constituting an infringement of any of Microsoft's trademarks, service mark and/or copyrights, or of Microsoft's rights in, or right to use or to exploit, these trademarks, service mark, and/or copyrights; and

(v) assisting, aiding, or abetting any other person or business entity in engaging in or performing any of the activities listed above;

1 C. That the Court enter an order pursuant to 15 U.S.C. § 1116 and 17 U.S.C. § 503
2 impounding all counterfeit and infringing copies of purported Microsoft software and/or
3 materials bearing any of Microsoft's trademarks or service mark, and any related item, including
4 business records, that are in Defendant's possession or under its control;

5 D. That the Court enter an order declaring that Defendant holds in trust, as
6 constructive trustees for the benefit of Microsoft, the illegal profits obtained from its distribution
7 of counterfeit and infringing copies of Microsoft's software, and requiring Defendant to provide
8 Microsoft a full and complete accounting of all amounts due and owing to Microsoft as a result
9 of Defendant's unlawful activities;

10 E. That Defendant be required to pay all general, special, actual, and statutory
11 damages which Microsoft has sustained, or will sustain, as a consequence of Defendant's
12 unlawful acts, and that such damages be enhanced, doubled, or trebled as provided for by 17
13 U.S.C. § 504(c) and 15 U.S.C. § 1117(b);

14 F. That Defendant be required to pay to Microsoft both the costs of this action and
15 the reasonable attorneys' fees incurred by Microsoft in prosecuting this action, as provided for
16 by 15 U.S.C. § 1117 and 17 U.S.C. § 505; and

17 G. That the Court grant Microsoft such other, further, and additional relief as the
18 Court deems just and equitable.

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1 DATED this 25th day of January, 2017.

2 DAVIS WRIGHT TREMAINE LLP
3 *Attorneys for Plaintiff Microsoft Corp.*

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